

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JASON WALTERS
Plaintiff

vs.

CIVIL ACTION 3:22-cv-01840-C
JURY REQUESTED

EXEL, INC. D/B/A
DHL SUPPLY CHAIN
Defendant

PLAINTIFF'S REPLY TO DEFENDANT'S MOTION TO STAY PROCEEDINGS
TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW Plaintiff, in the above entitled and numbered cause, and respectfully requests that this Honorable Court Deny Defendant's Motion to Stay Proceedings, and would show the court as follows:

I.

Plaintiff would request that this court take Judicial Notice of the Court's file. The record reveals that Plaintiff's lawsuit was filed on August 19, 2022. (Doc. No. 1). Thereafter pursuant to this Court's Scheduling Order, dated November 1, 2022 (Doc. No. . 16), which said docket control order was later modified by this Court's on June 14, 2023, Order (Doc. No. 41).

II.

Rule 16(b)(4) of the Federal Rules of Civil Procedure provide that a scheduling order may be modified only for good cause and with the judge's consent. The court in *Andrews vs. Rosewood Hotels & Resorts, LLC*, (No. 3:19-cv-01374-L (N.D. Tex. Oct. 8, 2021) stated:

A scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). The good cause standard requires the "party seeking relief to

show that the deadlines [could not] reasonably [have been] met despite the diligence of the party needing the extension." *S & W Enters.*, 315 F.3d at 535 (citation omitted). "Only upon the movant's demonstration of good cause to modify the scheduling order will the more liberal standard of Rule 15(a) apply to the district court's decision to grant or deny leave." *Id.* at 536. In deciding whether to allow an untimely amendment, a court considers "(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice." *Id.* at 536 (internal quotation marks, brackets, and citations omitted). "The good cause standard focuses on the diligence of the party seeking a modification of the scheduling order." *E.E.O.C. v. Serv. Temps, Inc.*, 3:08-CV-1552-D, 2009 WL 3294863, at *2 (N.D. Tex. Oct. 13, 2009), *aff'd*, 679 F.3d 323 (5th Cir. 2012)

III.

The Defendant appears to create a further delay in this case, despite the fact that Defendant has been aware since June 14, 2023 of the new scheduling order.

IV..

Defendant's entire premise is that the court will grant its motion for summary judgment; however a closer review of the current summary judgment evidence before the court reveals the following:

(a) In the appendix in support of Plaintiff's response to Defendant's Motion for Summary Judgment are Tabs 1-24, all of which that show there are questions of fact to be decided by the trier of fact, and summary judgment should not be granted. They are as follow:

- 1 Photograph of Plaintiff at work..... 001-010
- 2 Eartis Shaw in control..... 011-025
- 3 End of Shift reports submitted by Plaintiff..... 026-036
- 4 Adam Elliott no grace period..... 037
- 5 Plaintiff not aware of grace period..... 038
- 6 Excerpts from deposition of John Dobbins..... 039-047

7 Excerpts from deposition of Adam Elliott.....	048-051
8 Excerpts from deposition of Eartis Shaw.....	052-054
9 Excerpts from deposition of Deneill Hooper.....	055-059
10 Excerpts from deposition of Tammy Williams.....	060-062
11 Excerpts from deposition of Mickey Moza.....	063-090
12 Lack of signature of Plaintiff on correction action form.....	091
13 Determination from Texas Workforce Commission.....	092
14 Letter to Defendant.....	093-098
15 Discovery requests.....	099-110
16 declaration of Jason Walters.....	111-115
17 Mickey I'm trying to figure out when my health and dental insurance expire, 3/21/22.....	116
18 I really am taken by surpriseectgst direct questions could not be answered, 3/28/22.....	117
19 corrective action form not signed	118
20 definitely send Mickey email, one of biggest racist ever worked with.....	119
21 declaration of Jason Walters.....	120-128
22 declaration of Bennille Shelby.....	129-130
23 Dismissal and notice of right to sue letter from EEOC.....	131-134
24 List of employees terminated and ages	135

There is certainly summary judgment evidence to be decided by the trier of fact.

This Court has heretofore set a scheduling order, in which certain requirements are to be completed by certain dates. Plaintiff is attempting to comply with said order, and simply request

that Defendant's Motion to Stay Proceedings be denied.

WHEREFORE PREMISES CONSIDERED, Plaintiff Jason Walters prays that, the Court deny Defendants' Motion to Stay Proceedings, and that Plaintiff have such other and further relief to which he may show himself justly entitled, whether at law or in equity

Respectfully submitted

/S/
Bob Whitehurst
State Bar No. 21358100
Bob Whitehurst
5380 Old Bullard Road
Suite 600, #363
Tyler, Texas 75703
(903)593-5588
(214)853-9382

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing instrument was served upon the attorney's of record in accordance with the applicable Rules of Civil Procedure on this 26th day of July, 2024

Bob Whitehurst

Bob Whitehurst

Annie Lau
Texas Bar No. 24057723
FISHER & PHILLIPS LLP
500 Crescent Court, Suite 300
Dallas, Texas 75201
Telephone: (214) 220-9100
Facsimile: (214) 220-9122
alau@fisherphillips.com